

EXHIBIT 1

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 October 2018

Case No.: 2018-SOX-00004

In the Matter of:

JUAN LOZADA-LEONI
Claimant

v.

MONEY GRAM INTERNATIONAL, INC.
Respondent

RULING ON COMPLAINANT'S MOTION TO SUBSTITUTE
COMPLAINANT AS COUNSEL

1. **Nature of Motion.** Pursuant to 29 C.F.R. § 18.33, Complainant, through counsel, filed a motion seeking an Order permitting Complainant to personally take a deposition of a witness in this case in the place of Complainant's attorney of record.

2. **Findings of Fact and Procedural History.**

- a. On January 11, 2018, the undersigned issued a Notice of Case Assignment and Prehearing Order. This claim is currently scheduled for hearing on January 16-17, 2019 in Dallas, Texas.
- b. On October 9, 2018, Complainant filed a "Motion to Substitute Complainant as Counsel for Depositions." In support of the motion, Complainant stated his counsel, Mr. Steve Kardell, was required to reschedule a surgical procedure to October 22, 2018. In an effort to "help out with the deposition schedules," Complainant moves for an Order permitting himself to personally take the deposition of Mr. Juan Manuel Gonzales, who is identified by Complainant as a key witness. Complainant himself is also an attorney.
- c. On October 9, 2018, Respondent filed a reply in opposition to Complainant's motion.

3. **Applicable Law and Analysis.**

The issue before the undersigned is whether Complainant, who is represented by counsel in this matter, should be permitted to take a deposition of a key witness without the assistance or presence of his attorney of record. Although neither party cited any authority from the Administrative Review Board (ARB) on this specific issue, federal and states courts are "in

substantial agreement with the general proposition that a party in a civil action may appear either pro se or through counsel . . . but that he has no absolute right to do both in the absence of any express statutory or constitutional provision.” 67 A.L.R.2d 1102, at § 1 (originally published 1959). “The cases wherein the question has been directly raised generally agree that a litigant in a civil action who appears pro se cannot at the same time insist upon being represented by counsel and that to hold otherwise would interfere with the orderly procedure of a trial.” *Id.* § 2. “A party seeking to assert his statutory right to self-representation must clearly and unequivocally discharge any lawyer previously retained. A party does not have a right to self-representation and representation by counsel at the same time.” *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998) (citations omitted).

Complainant argues he should be permitted to personally take at least one deposition himself because his counsel of record is scheduled to have a surgical procedure near the discovery completion deadline, because Complainant himself is a licensed attorney in the state of Texas, and to reduce expenses. However, none of these proffered justifications rise to a level warranting Complainant to personally take depositions of witnesses and act as his own attorney during the discovery process. Allowing Complainant to personally take depositions, while at the same time remain represented by counsel, would likely result in easily avoidable challenges and unnecessarily interference with an orderly discovery process.

4. Ruling.

- a. Complainant’s Motion to Substitute Complainant as Counsel is DENIED.
- b. Complainant is not permitted to take a deposition of any witness in this matter while represented by counsel.

SO ORDERED.



Digitally signed by Tracy A. Daly
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Location: Covington LA

**TRACY A. DALY
ADMINISTRATIVE LAW JUDGE**

SERVICE SHEET

Case Name: LOZADA-LEONI_JUAN_v_MONEYGRAM_INTERNATIO_

Case Number: 2018SOX00004

Document Title: **RULING ON COMPLAINANT'S MOTION TO SUBSTITUTE
COMPLAINANT AS COUNSEL**

I hereby certify that a copy of the above-referenced document was sent to the following this 16th day of October, 2018:



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SERVICE SHEET continued (2018SOX00004 Order)

Page: 2

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